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Serial Number: 09/884,674   Dkt: 884.441US1 (INTEL)
Filing Date: June 19, 2001
Title: SYSTEM AND METHOD FOR AUTOMATIC AND ADAPTIVE USE OF ACTIVE NETWORK PERFORMANCE MEASUREMENT
       TECHNIQUES TO FIND THE FASTEST SOURCE
Assignee: Intel Corporation

REMARKS

This responds to the Office Action mailed on May 19, 2005.

Claims 1, 8, 12, 15, 18, 21, 25 and 28 are amended, no claims are canceled, and no claims are added; as a result, claims 1 and 3-30 are now pending in this application.

The Applicants respectfully request reconsideration and entry of the subject amendment. The subject amendment is believed timely, since the Applicants pursued a good faith belief in their previous responses to overcome the 35 USC 102 and the 35 USC 103 rejections. The 35 USC 102 rejection was in fact overcome. Further, this amendment is believed timely since this amendment does not present a new issue requiring further research and will simplify any appeal.

The Applicants believe that the final rejection of the claim of this Application is a premature final rejection, since the Ramanathan reference upon which the rejections are based is first presented in this Office Action. The Applicants respectfully request removal of this final rejection.

§*103 Rejection of the Claims*

Claims 1, 3-16, 18-20 and 25-29 were rejected under 35 USC § 103(a) as being unpatentable over Emens et al. (U.S. 6,606,643) in view of Ramanathan et al. (U.S. 5,913,041).

Base claims 1, 8, 12, 15, 18, 21, 25 and 28 have been clarified by including a step of "initiating a download of data to a download source of the plurality of sources". No new matter is believed introduced. See the Applicants' specification at page 1, line 30 through page 2, line 9.

All servers of Emens are an equal functional level. Downloads are transmissions from a server to a user level target. As discussed in the present Office Action and previous response such downloading is not taught or suggested. The Applicants believe that none of the art cited teaches or suggests this step or operation by a transmitter based upon empirical measurement of throughput from a third party source. Accordingly, the above mention base claims are believed allowable over the art of record. The Applicants respectfully request removal of this rejection.

Claims 17, 21-24 and 30 were also rejected under 35 USC § 103(a) as being unpatentable over Emens et al. and Ramanathan et al. in view of Andrews (U.S. 2002/0038360).

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Base claim 21 is believed allowable for the above reasons. The dependent claims are believed allowable by virtues of their dependency on an allowable base claim. Accordingly, this rejection is believed overcome. The Applicants respectfully request removal of this rejection.

Conclusion

Applicant respectfully submits that the claims are in condition for allowance and notification to that effect is earnestly requested. The Examiner is invited to telephones Applicants' attorney, Frank Bogacz, at 480-361-7740, or Applicants' below-named representative to facilitate the prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

Respectfully submitted,

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By their Representatives,

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Date _July 18 2005_   By _Ann M. McCrackin_
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